

**BEFORE THE WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD**

SKAGIT COUNTY GROWTHWATCH,

Petitioner,

v.

SKAGIT COUNTY,

Respondent,

and

DAY CREEK SAND & GRAVEL,

Intervenor.

No. 04-2-0004

**FINAL DECISION
AND ORDER**

I. SUMMARY OF THE DECISION

This matter comes to us on a Petition from Skagit County Growthwatch that challenges the following County Actions: (1) Resolution #R20030195, that changed the designation of certain properties owned by Day Creek Sand and Gravel to include a Mineral Resource Overlay on the basis of a “mapping error”; and (2) an administrative interpretation under File PL03-0883, that changed the designation of a certain site known as Karma Gardens from Agricultural Resource Lands to Rural Business.

Upon the County’s motion, the Board dismissed the issues in the Petition related to the Day Creek Sand and Gravel property. (*See* Order on Motion to Dismiss, June 2, 2004).

In this decision, the Board finds that the change in designation of the Karma Gardens site is a change in the designation on the Skagit County Comprehensive Plan map and

is therefore a comprehensive plan amendment. The Board finds that the County has erroneously used the administrative interpretation process to make the designation change. Because it used an administrative interpretation rather than following the County's procedures for a comprehensive plan amendment to make the designation change, the County's redesignation of the Karma Gardens site on the comprehensive plan map did not comply with the public participation goal and requirements of the Growth Management Act (GMA) and Skagit County's own public participation procedures as described in its comprehensive plan.

II. PROCEDURAL HISTORY RELATING TO THE KARMA GARDENS DESIGNATION CHANGE¹

On February 9, 2004, at the request of Scott Morgan and Deymien La Sar, the County Administrative Official changed the designation of a certain property known as Karma Gardens to Rural Business from Agricultural Resource Land through an administrative interpretation. (File PL03-0883). This administrative interpretation was published on February 12, 2004.

On February 26, 2004, the Board received a Petition for Review (PFR) from Skagit County Growthwatch challenging the administrative interpretation that had designated the Karma Garden property under File # PL03-0883.² Later, on March 9, 2004, the Board received an amended PFR concerning the same property.

In its order of June 2, 2004, the Board dismissed Issues 1-3 challenging Resolution #R20030195 regarding Day Creek Sand and Gravel. However, the Board retained jurisdiction over the issues regarding the Karma Gardens property (File No. PLO3-

¹ The disposition of the Day Creek Sand and Gravel challenge is found in this Board's Order on Motion to Dismiss, June 2, 2004).

² Both the original Petition for Review and the Amended Petition for Review also challenged the Day Creek Sand and Gravel decision.

8803) and held Issues 4-6 over for a Hearing on the Merits. Case No. 04-2-0004 (Order on Motion to Dismiss, June 2, 2004).

On June 14, 2004 we received a Motion for Reconsideration from Skagit County Growthwatch concerning the Board's June 2, 2004 order. The Board denied the Motion for Reconsideration on the ground that it would not be ripe for review until the Board has issued a Final Decision and Order in this case.

On July 14, 2004, a Hearing on the Merits was held in Mt. Vernon. Mr. Gerald Steele represented Skagit County Growthwatch and Mr. Don Anderson represented the County. Board Members Gayle Rothrock, Margery Hite, and Holly Gadbow attended.

III. BURDEN OF PROOF

As the Board reviews the challenges raised in the Petition for Review, the Board is bound to determine compliance under the "clearly erroneous" standard of review. Pursuant to RCW 36.70A.320(3), the Board "shall find compliance unless [it] determine[s] that the action by [the County] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." The County's actions were clearly erroneous if the Board is "left with the firm and definite conviction that a mistake has been made." *Department of Ecology v. Public Util. Distr.1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

Pursuant to RCW 36.70A.320(1), and the 2000 amendments thereto, the County's actions are presumed valid upon adoption. The burden is on Petitioner to demonstrate that the action taken by the County is not in compliance with the requirements of the GMA.

IV. ISSUES TO BE DISCUSSED

Issue 4: Whether the Comprehensive Plan and Zoning Map amendment or revisions associated with the Administrative Interpretation under File No. PL03-

0883 complied with the public participation and consistency requirements of the Growth Management Act including RCW 36.70A.020(11), -.035, -.070, -.106, -.130, and -.140 and the public participation program adopted by the County?

Issue 5: Whether the Comprehensive Plan and Zoning Map amendment or revisions associated with the Administrative Interpretation under File No. PL03-0883 were made in a manner that is consistent with the procedural requirements of Chapter 2 of the Comprehensive Plan as required by RCW 36.70A.070 (preamble) and -.130 and the consistency requirements of -.130?

Issue 6: Whether the Comprehensive Plan and Zoning Map amendment or revisions associated with the Administrative Interpretation under File No. PL03-0883 should be found invalid because of the substantial interference with the fulfillment of RCW 36.70A.020?

V. DISCUSSION OF THE ISSUES

Threshold Issue – Is The Redesignation Of The Karma Gardens Site A Comprehensive Plan Amendment?

The fundamental threshold issue that the Board must decide as we determine the remaining issues in this case is whether the change in designation associated with the Administrative Interpretation under File No. PL03-0883 is a comprehensive plan amendment. In our June 2, 2004 Order on Motion to Dismiss, the Board found that it did have jurisdiction to consider whether the administrative interpretations undertaken by the County are actually comprehensive plan amendments that should comport with the approved County processes for such amendments. *See WWGMHB Case 04-2-0004, Skagit County Growthwatch v. Skagit County* (Order on Motion to Dismiss, June 2, 2004) at 2 – 4.

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Positions of the Parties

Petitioner argues that the change in designation of the Karma Gardens property is a comprehensive plan amendment because it changes the designation on the County's comprehensive plan map from Agricultural Natural Resource Land (AG – NRL) to Rural Business (RB). Petitioner's Opening Brief with Motion Re: Schedule at 2-3. Petitioner points out that the County originally designated the Karma Gardens property as Agriculture – Natural Resource Lands on September 11, 1996. The same designation was shown in the 1997 GMA Comprehensive Plan adopted on June 1, 1997 and in the 2000 GMA Comprehensive Plan.

The Petitioner states that the County's Rural Business zone was created as a Limited Area of More Intense Development (LAMIRD), allowed pursuant to RCW 36.70A.070(5)(d), and is part of the Rural Element of its comprehensive plan. Petitioner's Opening Brief with Motion Re: Schedule at 4. Petitioner also argues that Chapter Two of the County's comprehensive plan provides that changes such as the change the property owners of Karma Gardens requested may be accomplished as a comprehensive plan amendment. The Petitioner maintains that the Board can adjudicate this matter because comprehensive plan amendments are matters that can be brought before the Board pursuant to RCW 36.70A.280(1)(a). Petitioner's Opening Brief with Motion Re: Schedule at 5 -6.

The County argues that the change in designation of the Karma Gardens property is not a comprehensive plan amendment but an administrative interpretation described in SCC 14.06.040 that allows the County to use this process to make this type of change. The County maintains that code interpretations are not subject to the Growth Management Act (GMA) but are subject to the Land Use Petition Act (LUPA) pursuant to RCW 36.70C.020. The County contends that the Petitioner is really challenging a code provision, SCC 14.06.040 and therefore, Petitioner's challenge is

too late because 60 days have long passed since the County adopted this portion of its code.

Board Discussion

To determine whether or not the action that the County took to change the designation for the Karma Gardens property from Agricultural Natural Resource Land to Rural Business constitutes a comprehensive plan amendment, we will first look to the GMA. In construing the statute, the fundamental objective is to carry out the intention of the Legislature. *State v. J.M.*, 101 Wn. App. 716, 725, 6 P.3d 607, 2000 Wash. App. LEXIS 1452 (Div. I). While the term “comprehensive plan amendment” is not specifically defined by the GMA, the term “comprehensive plan” is defined:

The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of *a map or maps*, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map. A comprehensive plan shall be adopted and amended with public participation as provided in RCW 36.70A.140.

RCW 36.70A.070

In accordance with this definition, the comprehensive plan map is an integral part of the comprehensive plan. Therefore, a change to the comprehensive plan map is a change in the comprehensive plan.

To determine the meaning of the term “amendment” in the GMA, in the absence of a statutory definition, courts may give a term its plain and ordinary meaning by reference to a standard dictionary. *Fraternal Order of Eagles v. Grand Aerie of Fraternal Order of Eagles, Washington State Ass’n*, 148 Wn.2d 224, 239, 59 P.3d 655 (2002); *see also HJS Dev., Inc. v. Pierce County*, 148 Wn.2d 451, 479, 61 P.3d 1141 (2003) (without a statutory definition, courts employ the dictionary definition);

Thurston County v. Cooper Point Ass'n., 148 Wn.2d 1, 12, 57 P.3d 1156 (2002) (upholding the Board's interpretation of "necessary" as consistent with the dictionary definition).

Reference to a standard dictionary gives us the following definitions: "Amend" is "to alter, modify, rephrase, or add to or subtract from (a motion, bill constitution, etc.) by formal procedure". *The Random House Dictionary of the English Language, The Unabridged Edition*. An "amendment" is defined as:

1. the act or state of amending or being amended,
2. an alternation of or addition to a motion, bill, constitution, etc.
3. a change made by correction, addition, or deletion.

Ibid.

A change which alters, modifies, rephrases, adds to or subtracts from the comprehensive plan must be seen as a comprehensive plan amendment.³ This interpretation is entirely consistent with the County's own comprehensive plan, which provides that "omissions and errors" in the comprehensive plan may be corrected through a comprehensive plan amendment. Skagit County Comprehensive Plan at 2-5.

Moreover, a change in designation is a highly significant change in a comprehensive plan. We have held previously that any designation change requires a comprehensive plan amendment process. *Abenroth v. Skagit County*, WWGMHB Case No. 97-2-0060 (Final Decision and Order, January 23, 1998).

Therefore, pursuant to the GMA, the change to the Karma Gardens property on the comprehensive plan map constitutes a comprehensive plan amendment.

³ While we can envision an occasion where correction of a typographical error might not alter any part of the meaning of a comprehensive plan provision, we consider the necessity for such corrections without a comprehensive plan amendment process to be strictly limited and subject to very strict scrutiny.

We note that the County's comprehensive plan comports with the GMA with regard to the necessity for comprehensive plan amendment procedures for changes to natural resource land designations. Chapter 2 of the County's comprehensive plan anticipates that amendments to natural resource lands and critical areas designations may occur but specifically provides that amendments to these designations deserve special care and consideration. Chapter 2 of the Comprehensive Plan is explicit that changes to natural resource lands and critical areas should be based on the following criteria: change in circumstances pertaining to the comprehensive plan or public policy, a change in circumstances beyond the control of the landowner, an error in designation, or new information on natural resource lands or critical area status (WAC 365-190-040 (2)(g)). Exhibit 128 at 2-6. This section is included under the heading, "Amending the Comprehensive Plan". Exhibit 128 at 2-5 The County's Comprehensive Plan clearly indicates that changes to natural resource lands designations are comprehensive plan amendments and one of the criteria to be considered in making changes to natural resource land designations is an error in designation. Exhibit 128 2-6. The direction in the comprehensive plan is clear that if the proposed reason for making a comprehensive plan amendment process is an error in designation then a comprehensive amendment process should be used.

Chapter 2 of the Comprehensive Plan discusses the types of amendments that the plan anticipates including comprehensive plan map amendments. The plan says this about comprehensive plan map amendments:

The boundaries separating the Urban Growth Area, Rural Areas, and Natural Resource Lands designations are intended be long-term and unchanging. Land use designations may be subject to minor refinements, but only after full public participation, notice, environmental review, and an official assessment of planning growth management indicators.

Skagit County Comprehensive Plan at 2-8. Exhibit 128

Before the County's action on File PLO3-8803, Karma Gardens had an Agricultural Natural Resource Land Designation. When the County changed the designation of Karma Gardens it changed the boundaries separating Natural Resource Lands from Rural Areas. The plan recognizes that this type of change is significant and that it requires public participation and environmental review, according to the County's adopted comprehensive plan amendment process.

These processes for proposing comprehensive plan amendments are codified in Section 14.08, Legislative Actions, of the Skagit County Code. Also, the Skagit County Code also defines comprehensive plan amendments as the following:

Comprehensive plan amendment. An amendment to the text or maps of the comprehensive plan.
SCC 14.04.020.

Therefore, we conclude that the County's comprehensive plan specifies that errors in designation, such as the Karma Gardens property owners contend occurred in the designation of their property, and changes in natural resource land designations, should be considered through the comprehensive amendment process specified in Chapter 2 of the County's comprehensive plan and codified in Chapter 14.08 of the Skagit County Code.

We also find that the County's Code does not conflict with either the GMA or the County's comprehensive plan in this regard. While the County argues that the use of an Administrative Interpretation according to SCC 14.06.040 is appropriate under the facts here, we refer to the code provisions that state, in pertinent part:

Administrative Interpretations – Official

Generally. Administrative interpretations are decisions by the Administrative Official as to the meaning, application, or intent of any the provisions of SCC Title 14. Administrative Interpretations are also available for *questions* regarding a map boundary or an alleged mapping

error that does not involve reconsideration or rebalancing of designation criteria. Procedural provisions and statements of policy shall not be subject to this process. . . (emphasis added).

SCC. 14.06.040 (3)(a).

At argument Petitioner pointed out that SCC 14.06.040 allows the Administrative Official to answer questions regarding a map boundary or mapping errors, but it does not authorize the Administrative Official to make changes in the designations on the comprehensive plan map. The direction in the comprehensive plan is clear that the process that should be used for making the requested change to the designation of the Karma Gardens property (reflected in a mapping change) is the comprehensive plan amendment process.

The County argues that this code section can be used to interpret any part of Chapter of SCC Title 14, and that includes Section 14.08 pertains to legislative decisions, such as comprehensive plan amendments. The Petitioner argues that SCC 14.06.040 (3)(a) is found in the Section 14.06 entitled Permitting Procedures and therefore applies to permit decisions instead of changes in comprehensive plan map designations. The intent section of SCC Chapter 14.06 says:

The intent of this Chapter is to combine and consolidate the application, review, and approval processes for development permits as defined by SCC 14.04. In addition this Chapter is intended to establish the roles and responsibilities the Administrative Official, Hearing Examiner, Planning Commission, and Board of County Commissioners related to development permits....Procedures for review and approval of Comprehensive plans, subarea plans, functional plans, development regulations, open space, open space use current applications, and amendments thereto, should be governed by shall be governed by Chapter 14.08 and not this Chapter. For development permits that require or propose an amendment to a plan or development regulation, the amendment shall first be processed pursuant to the requirement of SCC 14.08, and if/once that

amendment has been approved, the balance of the development permit decisions should be processed pursuant to the provisions of this Chapter.

SCC 14.06.010.

SCC 14.06.010 clarifies that this section does apply to permit decisions and that administrative interpretations defined in 14.06.040(3)(a) apply to administrative interpretations that are requested during the permitting process.

In this case, the Karma Gardens property owners could not get a permit, even a special use permit, for their proposed use under an Agricultural Resource Land designation. They needed a change in designation to Rural Business in order to obtain a permit for the change in use. The County comprehensive plan in Chapter 2 anticipated these situations and provides a process to propose changes in designations, as does Chapter 14.08 of the County's development regulations and SCC 14.06.010.

The Petitioner maintains this challenge is not a challenge to the compliance of SCC 14.06.040 with the GMA or the ability of the County to make administrative interpretations in permitting decisions, as the County argues. If this was, in fact, the situation, the period for challenge has long since past. However, this is not the situation. The amended petition is clearly a challenge to whether the County used an appropriate process to promulgate a change in designation on the comprehensive plan map that constitutes a comprehensive plan amendment. The County's comprehensive plan and code anticipate that changes will need to be made and clearly delineate a process for making comprehensive plan amendment. The plan emphasizes that changes in Agricultural Resource Land designations are significant and need public process and environmental review.

Conclusion: We find that the change in designation of the Karma Gardens property from Agricultural – Natural Resource Lands to Rural Business (File # PL03-0883) is a

comprehensive plan amendment and that the County's action in using the administrative interpretation process (SCC 14.06.010(3)(a)) to make a change in land use designation is clearly erroneous and fails to comply with the GMA.

Issue 4: Whether the Comprehensive Plan and Zoning Map amendment or revisions associated with the Administrative Interpretation under File No. PL03-0883 complied with the public participation and consistency requirements of the Growth Management Act including RCW 36.70A.020(11), -.035, -.070, -.106, -.130, and -.140 and the public participation program adopted by the County?

Having found that the change in the comprehensive plan map regarding Karma Gardens was a comprehensive plan amendment, we will next consider whether the County complied with the public participation goals and requirements of the GMA and the County's own public participation program when it effected the change in land use designation. Petitioner argues that when the County administrative official made the decision to change the designation for the Karma Gardens site from Agricultural Natural Resource Lands to Rural Business, the County failed to abide by its adopted public participation procedures. Petitioner argues that the limited public process the County code sets out for making an administrative interpretation does not meet the public participation requirements of the GMA for comprehensive plan amendments. Petitioner contends that the County's action specifically violates RCW 36.70A.020(11), -.035, -.070, -.106, -.130, and -.140. Petitioner also contends that the lack of public process surrounding the issuance of administrative interpretation failed to comply with the County's own public participation procedures contained in Chapter 2 of the County's comprehensive plan. Petitioner's Opening Brief With Motion RE: Schedule at 5 and 6.

The County contends that the Administrative Interpretation process was an appropriate way to make this change, and notice was published in the newspaper concerning the change and the notice contained information that the Administrative Interpretation or the Karma Gardens site could be appealed to the Hearings Examiner. The County contends that these actions sufficiently fulfilled the notice and public participation requirements for administrative interpretations. County's Response at 2.

Because we have found that the change of designation for the Karma Gardens site on the comprehensive plan map is a comprehensive plan amendment, it is subject to public participation requirements for comprehensive amendments in the GMA, the County's plan, and the County's code. RCW 36.70A.130(1)(b) requires that a revision to the comprehensive plan conform with the GMA, which includes the public participation requirements of RCW 36.70A.070, .140, and .035. RCW 36.70A.070 says that "a comprehensive plan shall be adopted and amended with public participation as provided in RCW 36.70A.140." RCW 36.70A.140 directs counties and cities planning under the GMA including Skagit County to establish and broadly disseminate a public participation program identifying such procedures providing for early and continuous public participation in the development and amendment of comprehensive plans and development regulations implementing such plans. The County has done that in Chapter 2 of its comprehensive plan and Chapter 14.08 of the Skagit County Code. RCW 36.70A.035 calls for notice procedures that are reasonably calculated to provide notice of proposed amendments to comprehensive plans and development regulations to a broad range of interest groups. RCW 36.70A.020(11) is the goal of the GMA that encourages involvement of citizens in the planning process. RCW 36.70A.106 directs the County to notify the Department of Community, Trade, and Economic Development 60 days before a comprehensive plans, development regulations, and amendments of plans and development regulations 60 days in advance of adoption.

While the County has a GMA-compliant public participation process for comprehensive plan amendments, it did not follow that process here. This was, of course, because the County did not view its action to be an amendment of the comprehensive plan. However, regardless of what the County called the change in land use designation, it was a comprehensive plan amendment and required full public participation under the County's public participation plan. Failure to conduct that public participation process violates the County's own comprehensive plan and RCW 36.70A.020(11), 36.70A.035, and 36.70A.130.

Because the County used the Administrative Interpretation Process to change the designation on the comprehensive plan map for the Karma Gardens site, the County only published notice of its decision and information on how that decision could be appealed. Rather than broad public participation in this decision, the only persons that can participate in the appeal of an administrative interpretation process are those that are "aggrieved". Only aggrieved persons can challenge administrative interpretations through an appeal to the Hearings Examiner. Aggrieved persons also must pay a fee to challenge administrative interpretations.

Conclusion: Because the County erroneously used the administrative interpretation process to change the designation on the comprehensive plan map, it did not follow the processes for comprehensive plan amendments set out in the GMA and its own comprehensive plan. As a result, the County only provided notice to the public on the administrative interpretation after the decision was made and thus, did not give adequate notice to the public of the proposed amendment as required by RCW 36.70A.035. The County did not encourage public participation as required by RCW 36.70A.020(11) when it did not allow public participation prior to the administration official making a decision in the redesignation of the Karma Gardens site. Nor did it

meets its public participation requirements because it only allowed public participation after the decision was made through a limited process that provided for an appeal to the Hearings Examiner by aggrieved⁴ persons who paid a fee. Furthermore, by approving the redesignation of the Karma Gardens site in this manner, the County's action was not consistent with the requirements of the GMA as required by RCW 36.70A.130(1)(b). Finally, the redesignation of Karma Gardens by an administrative interpretation did not comply with the County's public participation procedures for public participation and environmental review established in by Chapter 2 of the Skagit County's comprehensive plan and ch.14.08 SCC. See, in particular, SCC 14.08.070. By not following its own procedures for amending comprehensive plans, the County also did not comply with RCW 36.70A.070 that requires counties and cities planning under the Act to adopt and amend comprehensive plans with participation as provided in RCW 36.70A.140. Therefore, the process that the County used to change the designation of the Karma Gardens on the comprehensive plan map fails to comply with RCW 36.70A .035, -.070 and -.130, as well as the public participation program adopted by the County in Chapter 2 of its comprehensive plan. We will not reach whether the County complied with RCW 36.70A. 106(transmittal to CTED).

While we assume that the County also needed to amend its zoning map when it amended its comprehensive plan map, Petitioner's brief did not address that change, so we will not reach that issue either.

Issue 5: Whether the Comprehensive Plan and Zoning Map amendment or revisions associated with the Administrative Interpretation under File No. PL03-0883 were made in a manner that is consistent with the procedural requirements of

⁴ A party or person is aggrieved by a judgment, order, or decree whenever it operates prejudicially or directly on his property, pecuniary, or personal rights. Barrons Law Dictionary, 1984.

Chapter 2 of the Comprehensive Plan as required by RCW 36.70A.070 (preamble) and -.130 and the consistency requirements of -.130?

Because of the decision reached above, we do not reach this issue.

Issue 6: Whether the Comprehensive Plan and Zoning Map amendment or revisions associated with the Administrative Interpretation under File No. PL03-0883 should be found invalid because of the substantial interference with the fulfillment of RCW 36.70A.020?

Petitioner asks for invalidity because a permit could vest under the Rural Business designation that could cause substantial interference with RCW 36.70A.020(11), the GMA's public participation goal. Petitioner's Opening Brief with Motions Re: Schedule at 6. The Petitioner also at argument contended that an invalidity finding is necessary to send a message to the County that it may not use the administrative interpretation process for changes to the comprehensive plan.

Chapter 2 of the Comprehensive Plan takes very seriously the boundaries drawn to separate Agricultural Lands from Rural Lands:

The boundaries separating the Urban Growth Area, Rural Areas, and Natural Resource designations are intended be long-term and unchanging. Land use designations may be subject to minor refinements, but only after full public participation, notice, environmental review, and an official assessment of planning growth management indicators.

Skagit County Comprehensive Plan at 2-8. Exhibit 128.

With this decision, the Board makes it clear to the County that land use designation changes made through its administrative interpretation process are not compliant with the GMA. However, invalidity should only be imposed when the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment

of the goals of the GMA. RCW 36.70A.302. Here, a determination of invalidity of the administrative interpretation would only be directed towards the change in designation of the Karma Gardens property. It would not, as the Petitioner suggests, impact the County's *practice* of using administrative interpretations since, as we have found the County's comprehensive plan and development regulations do not allow that procedure and, in any event, those provisions are not challenged here. A finding of invalidity, thus, would not affect the challenged process any more than will the finding of noncompliance.

Conclusion: The Board does not discount the importance of conserving agricultural resource lands and ensuring that these lands are protected from incompatible uses. Nevertheless, we find that the size of the site and the degree of change that could occur in the interim while the County is bringing itself into compliance would not cause significant impacts to nearby agricultural land during the remand period. The Board has said that invalidity should be applied when it would prevent appropriate planning from proceeding.⁵ These are not the circumstances in this case. The Board declines to impose a finding of invalidity.

VI. FINDINGS OF FACT

1. Skagit County is a county located west of the Cascades and required to plan under RCW 36.70A.040.
2. Skagit County changed the designation of the Karma Gardens site on the County's comprehensive plan map through an administrative interpretation pursuant to SCC 14.06.040(3)(a).

⁵ See *Abenroth v. Skagit County*, Case No. 97-2-0060c (FDO 1/23/98) and *Wean v. Island County*, WWGMHB Case No. 95-2-0063 (CO 4/10/96).

3. Skagit County published the administrative decision that redesignated the Karma Gardens site Rural Business on February 12, 2004.

4. The County's comprehensive plan contains a map that specifically designates the land use category applicable to the Karma Gardens property. To change the designation of the Karma Gardens property from Agricultural Resource Land to Rural Business, the County changed the comprehensive plan map, and therefore, changed the comprehensive plan.

5. Petitioner filed a Petition for Review of the administrative interpretation that redesignated the Karma Gardens site from Agricultural Resource Lands to Rural Business with this Board on February 26, 2004 and an amended Petition for Review on March 9, 2004.

6. Petitioner did not file an appeal of the administrative interpretation to the County's hearing examiner. SCC14.06.010 provides that only aggrieved persons can appeal administrative interpretations to the Hearings Examiner and must pay a fee to file an appeal.

7. The administrative interpretation process provided no opportunity for Petitioner Skagit County Growthwatch, a citizen group, to participate in the redesignation of the Karma Gardens property on the Skagit County Comprehensive Plan Map before the administrative decision was published on February 12, 2004.

8. Chapter 2 of the Skagit County Comprehensive Plan provides that omissions and errors in the comprehensive plan may be corrected through a comprehensive plan amendment.

9. SCC 14.04.020 defines a comprehensive plan amendment as an amendment to the text or maps of the comprehensive plan.
10. RCW 36.70A.070 requires that a comprehensive plan shall be adopted and amended in accordance with County's public participation procedures as required by RCW 36.70A.140.
11. Chapter 2 of the Skagit County Comprehensive Plan and Ch.14.08 SCC contain procedures for how Skagit County's comprehensive plan should be amended.
12. The administrative interpretation process does not provide for early and continuous public participation, notice of the proposed change to the comprehensive plan, or an opportunity for oral or written comments before the change to the comprehensive plan is considered.
13. The administrative interpretation process only requires official notice of the adoption of the official interpretation and information on how the decision can be appealed to the Hearings Examiner.
14. The administrative interpretation provisions of the County Code upon which the County relied in making the challenged administrative interpretation, are found in Chapter 14.06 of the code. Chapter 14.06 SCC applies to permits issues, not to issues regarding the comprehensive plan.
15. Chapter 14.08 SCC applies to comprehensive plan changes and does not contain a provision for administrative interpretations.

16. RCW 36.70A.035 requires that reasonable notice be given to all kinds of different interest groups prior to adopting comprehensive plan amendments.

17. RCW 36.70A.130(1)(b) requires that actions taken to amend comprehensive plans be consistent with the GMA, including the RCW 36.70A.020(11) and public participation requirements of the GMA, including RCW 36.70A.035, and -070.

VII. CONCLUSIONS OF LAW.

A. The Board has jurisdiction over the case pursuant to RCW 36.70A.250(1)(c).

B. Petitioner has standing to challenge the redesignation of the Karma Gardens site as the Petition for Review as been filed in a timely way pursuant to RCW 36.70A.290(2).

C. The change of designation of the Karma Gardens site on the comprehensive plan map from Agricultural Resource Lands to Rural Business is a comprehensive plan amendment.

D. The Board has jurisdiction over comprehensive plan amendments pursuant to RCW 36.70A.280(1).

E. By using the administrative interpretation process to make a comprehensive plan amendment, the County failed to comply with the GMA requirements for public participation in comprehensive plan amendments, including RCW 36.70A.020(11),-.035 -.070, and -.130 (requiring consistency with GMA requirements including public participation requirements for comprehensive plan amendments).

F. By using the administrative interpretation process to make a comprehensive plan amendment, the County did not comply with its own public participation and environmental review requirements of Chapter 2 of its comprehensive plan.

VIII. ORDER

This matter is hereby REMANDED to Skagit County to bring the challenged administrative interpretation into compliance with the GMA within 180 days of this order in accordance with this decision. The following schedule shall apply to the compliance proceedings:

COMPLIANCE SCHEDULE

Compliance Deadline	February 21, 2005
County's Statement of Actions Taken and Index Deadline	March 7, 2005
Petitioner's Additions to Index and Motions to Supplement the Record Deadline	March 18, 2005
Petitioner's Objections to a Finding of Compliance Due	March 28, 2005
County's Response	April 18, 2005
Petitioner's Reply (optional)	April 25, 2005
Compliance Hearing	May 3, 2005

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This is a final decision for purposes of appeal. RCW 36.70A.300(5). Pursuant to WAC 242-02-832(1), a motion for reconsideration may be filed within ten days of issuance of this final decision.

So ORDERED this 24th day of August 2004.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Holly Gadbaw, Board Member

Gayle Rothrock, Board Member

Margery Hite, Board Member